

ARKANSAS SUPREME COURT

No. CR 06-1422

VINCENT M. COOPER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 18, 2007

PRO SE MOTION FOR BELATED
APPEAL and MOTION FOR RULE ON
CLERK [CIRCUIT COURT OF MILLER
COUNTY, CR 2002-119, HON. KIRK
JOHNSON, JUDGE]

MOTIONS DENIED.

PER CURIAM

In 2005, petitioner Vincent M. Cooper was found guilty by a jury of aggravated robbery and attempted robbery. An aggregate sentence of 360 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Cooper v. State*, CACR 05-818 (Ark. App. Mar. 1, 2006). Subsequently, petitioner timely filed in the trial court a *pro se* petition for postconviction relief pursuant to Criminal Procedure Rule 37.1, which was denied. Petitioner timely filed a notice of appeal from the order, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by Ark. R. App.-Civil 5(a).

Now before us is petitioner's motion seeking leave to lodge the record belatedly and proceed with an appeal of the trial court's order. As the notice of appeal was timely filed, we treat the motion as a motion for rule on clerk. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (*per curiam*); *see also Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (*per curiam*). After he filed the motion, petitioner filed a second motion, which was labeled a "motion for rule on clerk,"

containing the same information and also seeking to lodge the record belatedly.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right, however, goes the responsibility to file a timely notice of appeal and tender the record here within the time limits set by the rules of procedure. If a petitioner fails to tender the record in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). The fact that a petitioner is proceeding *pro se* does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*).

Petitioner here asserts in his motions that he should be permitted to lodge the record belatedly because he submitted a request to the circuit clerk under the Freedom of Information Act for the certified record at public expense, but the circuit clerk failed to provide it to him. However, the Freedom of Information Act, codified as Ark. Code Ann. § 25-19-101 *et seq* (Repl. 2002), does not require a court or its clerk to provide photocopies at public expense. *See Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (*per curiam*). Petitioner does not assert that he obtained an order from the court directing that the record was to be prepared by the clerk at public expense. Moreover, it is not the responsibility of the circuit clerk, or anyone other than the *pro se* party desiring to appeal, to perfect the appeal. *See Sullivan, supra*.

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect

compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (*per curiam*), citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (*per curiam*). As it was the duty of the petitioner to tender the record to this court in a timely manner, and he has not established good cause for his failure to do so, the motions to proceed with the appeal are denied.

Motions denied.